

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROAD WIDENER, LLC,

Plaintiff,

-v-

1:20-CV-160

ROBERT H. FINKE & SONS, INC.

Defendant.

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DAVID N. HURD
United States District Judge

ORDER ON REPORT & RECOMMENDATION

On February 18, 2020, plaintiff Road Widener, LLC (“Road Widener”) filed this patent infringement action against defendant Robert H. Finke & Sons, Inc. (“Finke & Sons”). Dkt. No. 1. At issue is a patent describing a flexible skid steer attachment device designed for use in paving shoulders and widening roads.

On September 18, 2020, the parties jointly requested a “claim construction hearing” pursuant to Local Patent Rule 4.4(a). Dkt. No. 32. Thereafter, the matter was referred to recalled U.S. Magistrate Judge David E. Peebles for the “sole purpose of conducting a *Markman* hearing and issuing a Report and Recommendation regarding the construction of disputed patent claim terms.” Dkt. No. 47.

On May 13, 2021, Judge Peebles advised by Report & Recommendation (“R&R”) how the disputed terms of the patent should be construed. Dkt. No. 48. Both parties have filed objections to the R&R. Dkt. Nos. 49–50. The objections have been fully briefed. Dkt. Nos. 51–52.

Upon *de novo* review of the portions to which each party has objected, the R&R will be modified in part to incorporate the two inadvertent errors identified in Road Widener's brief, Dkt. No. 49, and acknowledged as appropriately corrected by Finke & Sons in its responsive submission, Dkt. No. 52. The remaining objections are overruled. See 28 U.S.C. § 636(b)(1).

Therefore, it is

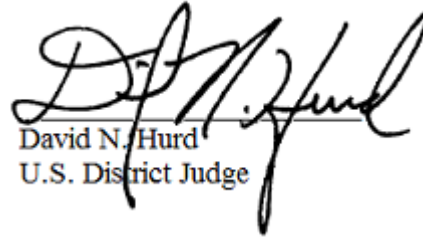
ORDERED that

1. The Report & Recommendation (Dkt. No. 48) is accepted as modified:

<u>Term / Phrase</u>	<u>Construction</u>
vertical deflection component	an element that facilitates movement of debris downward, in a vertical direction, toward the conveyer belt
oriented vertically	substantially perpendicular to the horizontal plane
vertically downward	toward the conveyer belt on a vector substantially perpendicular to the horizontal plane
vertically oriented	substantially perpendicular to the horizontal plane
pulley	a roller having a cylindrical shape and structure which is fixed on a shaft and permits the application or transmission of power to a belt
horizontal plane	a plane defined by the horizontal axis of the hopper
vertical	substantially perpendicular to the horizontal plane

angled walls	no construction needed in light of parties' agreement
angle of deflection	the angle between the vector of debris being received in the hopper and the surface of the angled wall being impacted by the debris

IT IS SO ORDERED.



David N. Hurd
U.S. District Judge

Dated: June 30, 2021
Utica, New York.